

## **The complaint**

Mrs M complains about the quality of a car supplied to her by BMW Financial Services(GB) Limited trading as ALPHERA Financial Services ("BMWFS").

## **What happened**

Mrs M acquired a used car under a 43 month hire purchase agreement with BMWFS in November 2023. The car cost around £17,800 and Mrs M made a deposit payment of £1,000. Under the agreement, Mrs M was required to make 42 payments of £362.77, followed by a final payment of £6,871 if she wanted to keep the car. The car was supplied by a dealership I'll refer to as "D". At the time the car was acquired by Mrs M, it was around five years old and the mileage was recorded as 55,724.

In January 2024, Mrs M said the engine blew up after the timing chain snapped and the car became undriveable. Mrs M said she contacted D but because she had the car for more than 60 days, it said it wouldn't repair the car. Mrs M complained to BMWFS and said she wanted to reject the car.

BMWFS didn't issue a response to Mrs M's complaint. And as eight weeks had passed since Mrs M complained to BMWFS, Mrs M referred a complaint to this service.

BMWFS told this service that it was still considering Mrs M's complaint in June 2024.

Our investigator looked into the complaint and said he thought the car supplied to Mrs M was of unsatisfactory quality. He said he could see that BMWFS had made numerous unsuccessful efforts to contact D. But he said due to the amount of time that had passed, he didn't think repair was a reasonable option. He recommended that BMWFS end the agreement at no further cost to Mrs M, collect the car, cover the cost of any incurred storage fees and refund Mrs M's deposit. He also said BMWFS should refund Mrs M any monthly payments she had made with a deduction made for any periods she was provided with a hire car and that BMWFS should pay applicable interest to these amounts. Finally, he said that Mrs M should pay £150 compensation.

Mrs M said that she had only been supplied with a hire car for one week and this wasn't fit for purpose as it wasn't big enough for her family. She also explained the impact of not having a car since January 2024 and said she was paying for an extended warranty that hadn't been activated by D.

Our investigator responded and said that as the warranty didn't form part of the finance agreement, BMWFS wasn't responsible for this.

BMWFS didn't respond to our investigator.

As BMWFS hasn't responded, the complaint has been passed to me to decide.

As part of this decision, I won't be commenting on the warranty Mrs M took out. This is because it wasn't paid for as part of the hire purchase agreement and so, Mrs M will need to pursue a complaint about this with the warranty provider directly.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable

in the circumstances of this complaint.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that Mrs M has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

What I need to decide in this case is whether the car supplied to Mrs M was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated hire purchase agreement. So our service is able to consider complaints relating to it. BMWFS is the supplier of the car under this type of agreement and so is responsible for dealing with a complaint about its quality.

The Consumer Rights Act 2015 ("CRA") covers conditional sale agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

Mrs M acquired a car that was used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

In this case, Mrs M reported that the car cut out in January 2024. This was two months after it was supplied to her. No job sheets have been provided to show what faults occurred. However, email correspondence between the broker of the finance – who I'll refer to as "Q" – and BMWFS has been provided. Having reviewed this, I'm satisfied that there does appear to be a fault with the car that was supplied to Mrs M as the email correspondence confirms the timing chain and engine had failed. I now need to consider whether this fault makes the car of unsatisfactory quality.

The correspondence between Q and BMWFS shows that D told Q that Mrs M told it that the car didn't turn on and so, it provided her with a hire car for seven days. The car was then booked in for repairs in mid-January 2024 but the repair garage said the car needed to go to "MD", which I assume is the manufacturer dealer. The car was taken to a manufacturer represented garage at the end of January 2024. D said it upgraded Mrs M's hire car to a larger car in February 2024. In March 2024, the manufacturer garage reported to D that the car had been repaired but in April 2024, D said it received an approval request for it to look into. D also confirmed that the mileage was 58,500. This means the car had travelled around 2,750 miles since it was supplied to Mrs M.

In May 2024, email correspondence shows that Q told BMWFS that the car was in for repairs, the repair was ongoing and it hadn't yet received a completion date. In June 2024, BMWFS told Q that D had told Mrs M that it wouldn't fund the cost of the engine repair. It said the timing chain issue had been repaired but the car wasn't working as the engine had failed. Since then, there is no supporting information to show whether the car has been repaired or not.

Having thought about all of this carefully, when Mrs M acquired the car, it was around five years old and the mileage was recorded as 55,724. After Mrs M had approximately completed around 2,750 miles and within two months, the timing chain failed and this resulted in the engine failing.

One of the considerations of whether goods are of satisfactory quality is durability. Here, the timing chain needed replacing when the car was around five years old and at around 58,500 miles. The engine also needed repairs. There is no information to suggest that Mrs M didn't maintain the car as she was expected to in the two months she had the car and the mileage travelled by Mrs M is minimal. So, I consider that the issue with the timing chain was likely present at the time the car was supplied to Mrs M by D.

The timing chain is a part which a reasonable person would expect to last a considerable amount of time. I think a reasonable person would consider that a timing chain would last longer than 58,500 miles. And it wouldn't be reasonably expected that a car would suffer a major component failure, without any prior notification, considering the age and mileage at the time the car failed. And so, I consider that the timing chain failed prematurely and so, it wasn't durable. I also consider that the issues with the timing chain likely caused the engine to fail. It follows that I don't think the car was of satisfactory quality when it was supplied to Mrs M.

I've gone on to think about what BMWFS needs to do to put things right.

Whilst I appreciate that BMWFS has one chance to repair the car and Mrs M appears to have accepted a repair for the fault, any repairs carried out need to be carried out within a reasonable time and without significant inconvenience.

However, in this case, D has only arranged the repair of the timing chain but doesn't appear to be willing to cover the cost of the engine failure, which appears to have occurred as a result of the timing chain failure. This isn't a cost that I consider Mrs M needs to pay for, given that I'm satisfied the car supplied to her was of unsatisfactory quality. As it has now been nine months since Mrs M reported the issues with the car and the car doesn't yet appear to have been repaired, I'm not satisfied that repairs have been completed or carried out within a reasonable time or without significant inconvenience. I'll explain the significant inconvenience Mrs M suffered later in this decision.

As a result of this, I think Mrs M should be entitled to reject the car, that BMWFS should collect the car at no further cost to Mrs M and it should refund her deposit contribution. Mrs M also shouldn't be held liable for any of the repairs that have already been carried out.

The car broke down in January 2024. Since then, Mrs M has not had use of the car. She has provided supporting information to show that she was provided with a hire car for one week. D in its email to Q said it provided two hire cars, however it hasn't provided any supporting information to show this. Given Mrs M hasn't had use of the car, BMWFS should refund Mrs M all the payments she had paid towards her hire purchase agreement since January 2024. From this amount, it should make a pro-rata deduction from a monthly payment for one week's car hire that she received. Should BMWFS have any further supporting information to suggest that Mrs M was provided a hire car on further occasions or for longer periods of time, it will be entitled to a pro-rata deduction for each week Mrs M was provided a car. BMWFS should also pay Mrs M applicable interest on any amounts that will be refunded.

Mrs M has mentioned that she was being charged storage fees by the garage that carried out the initial repair. No supporting information has been provided to confirm this or what amount this is. However, I don't consider that Mrs M is liable for any storage fees as a result of the repair to the car. Instead I think that BMWFS should liaise with the repair garage directly to discuss any storage fees it may be required to pay.

I've also considered the impact of Mrs M being without a car for around nine months. Mrs M has said she had to borrow a car to take her children to the hospital on three occasions. She said during these times, her newborn child was suffering from breathing difficulties and having to arrange alternative transport to go to the hospital was stressful. She also said she had difficulty transporting her other children to events and has had to rely on other people to transport her children around.

Mrs M said she had attempted to resolve things with both D and BMWFS, but this was unsuccessful. She also said that the hire car she was provided was not fit for purpose as the car she had acquired was a seven seater, but the car she was provided during the hiring week was a five seater.

Having considered the impact Mrs M has detailed, I'm satisfied she was caused significant inconvenience and distress as a result of being without a car for around nine months and due to the faults with the car. BMWFS became aware of the fault with the car in around April 2024 and since then, despite telling Q and D that the car needed to be repaired, BMWFS hasn't independently arranged a repair of the car. In light of all of this and the impact caused to Mrs M, I think that BMWFS should pay Mrs M £350 to reflect the distress and inconvenience caused.

### **My final decision**

My final decision is that I uphold Mrs M's complaint. BMW Financial Services(GB) Limited trading as ALPHERA Financial Services should do the following to put things right:

- end the agreement with nothing further to pay;
- collect the car (if this has not been done already) at no further cost to the customer and liaise with the repair garage about the payment of any storage fees;
- refund Mrs M deposit contribution of £1,000;
- refund any payments made by Mrs M towards the hire purchase agreement from January 2024. From this amount, BMWFS is entitled to make a one week pro-rata deduction for the hire car. However, should it have further supporting information, such as a hire invoice, to show that a hire car was provided on further occasions, it will be entitled to deduct a further amount for each week Mrs M was provided with a hire car;
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date;\*
- pay £350 for any distress and inconvenience that's been caused due to the fault with the car; and
- Amend any adverse information reported to credit reference agencies about this hire purchase agreement.

\*If BMW Financial Services(GB) Limited trading as ALPHERA Financial Services considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs M how much it's taken off. It should also give Mrs M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

\*\*If BMW Financial Services(GB) Limited trading as ALPHERA Financial Services does not pay this £350 compensation for inconvenience and distress within 28 days of the date on which we tell it Mrs M accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 5 November 2024.

Sonia Ahmed  
**Ombudsman**